



The Commonwealth of Massachusetts

Office of Campaign & Political Finance

One Ashburton Place, Boston 02108

727-8352

AO-6

Dennis J. Duffin
Director

May 19, 1983

Gail M. Harmon, Esquire
Harmon & Weiss
1725 I Street, NW
Suite 506
Washington, DC 20006

*See Interpretive Bulletin 104, issue
March 3, 1986, amended June 9, 1986
and memorandum 104, issued
June 9, 1986 for clarification and
update on this opinion

Dear Ms. Harmon:

This letter is in response to your recent request for advice to this office. Your letter dealt with several issues, and I have divided them into the following questions, which I will respond to accordingly.

1. May a non-profit corporation formed under the provisions of M.G.L. c. 180 function as a political committee?

In 1982, this office issued an Advisory Opinion 82-08. For the reasons stated in that opinion, a copy of which is enclosed, "M.G.L. c. 55 does not permit the incorporation under M.G.L. c. 180 of a political committee."

2. May a Political Action Committee registered with this office and associated with a nation-wide organization, make unlimited transfers to another political committee registered with this office?

M.G.L. c. 55 defines contributions, in part, as "... (2) transfer of money or anything of value between political committees." Therefore, transfers between political committees are defined and reported as contributions. Chapter 55 does not prohibit registered political committees from receiving contributions from multi-candidate political committees, and in unlimited amounts, provided such committees are also organized pursuant to the requirements of G.L. c. 55.

3. May business corporations contribute to political committees organized with this office so long as those funds are exclusively used to influence the vote on a question on a ballot?

Pursuant to the holding of the United State Supreme Court in the case of First National Bank v. Bellotti, a business corporation may expend money in unlimited amounts in order to influence the vote on a question to be submitted to the voters. Such a corporation may also make contributions in unlimited amounts to political committees organized with this office for the purpose of influencing the vote on a question submitted to the voters. However, c. 55, Section 22 does provide that, the treasurer of any such corporation which has contributed or expended money or anything of value in order to influence or affect the vote on any question submitted to the voters must disclose the same on reports which are due as follows: (1) the sixtieth day prior to the election, on or before (2) the fifth and twentieth day of each month complete as of the preceding first and fifteenth day of the month, until the election and, thereafter, (3) the fifth day of each month until all declared liabilities have been discharged.

4. May a corporation formed pursuant to the provisions of M.G.L. c. 180 make contributions, in unlimited amounts, to political committees registered in Massachusetts?

While a 180 corporation may not function as a political committee, it may make contributions in unlimited amounts to all political committees registered with this office. Of course, a political committee in receipt of such contributions must disclose the same in the reports they file with this office.

5. May out-of-state non-profit corporations participate in Massachusetts campaign finance activity, and if so, in what manner?

In First National Bank of Boston v. Bellotti, the United States Supreme Court specifically held that corporations may expend money to influence the vote on any question submitted to the voters, and based their holding on the fact that these expenditures concerned that type of speech which the First Amendment was intended to protect. It necessarily follows from that opinion that if business corporations may undertake such activity, so may non-profit corporations, based on the same premises which were noted in this case. Therefore, out-of-state non-profit corporations may contribute to ballot committees, or expend funds to influence the vote on a question submitted to the voters, in unlimited amounts. However, such corporations should disclose such activity to this office, in the same manner as described above for business corporations.

The question concerning the participation of out-of-state non-profit corporations in campaign financing for candidates requires a different examination and result. Anderson v. City of Boston, 380 N.E. 2d 628 (1978), app. granted 99 S. ct. 50, stay denied, 99 S. ct. 346, appeal dismissed, 99 S. ct. 822, a Supreme Judicial Court of Massachusetts case, involved taxable inhabitants of the city of Boston seeking a declaratory judgement concerning the legality of certain activities contemplated by the city to influence the vote on a question on a state ballot. In holding that the city of Boston had no authority to appropriate and expend public funds for such a purpose, the court found that the absence of a reference in G.L. c. 55 to a particular activity was important as an indication that the legislature did not even contemplate such action could occur. The court stated that "We interpret G.L. c. 55 as intended to reach all political fundraising and expenditures within the Commonwealth. The court clearly suggests that if G.L. c. 55 does not explicitly permit certain campaign finance activity, such activity is prohibited.

In accordance with this reasoning, it is my opinion that the absence of any reference in M.G.L. c. 55 to non-profit corporations other than those incorporated under M.G.L. c. 180 is significant as an indication that the legislature did not even contemplate their participation in Massachusetts campaign finance activity. Therefore, barring any case law which would compel a different result, as in the participation of out-of-state non-profit corporations in ballot question campaigns, the statutory language of c. 55 does not permit out-of-state non-profit corporations to make contributions to, or expenditures on behalf of candidates or their political committees, or multi-candidate political committees.

6. Are activities by a political committee in contemplation of a question appearing on a ballot appropriate campaign expenditures?

M.G.L. c. 55, Section 7 provides that "A political committee or a person acting under the authority of or on behalf of such a committee may receive money or its equivalent, or expend or disburse or promise to expend or disburse the same for the purpose of aiding or promoting the success or defeat of a candidate at a primary or election or a political party or principle in public election or favoring or opposing the adoption or rejection of a question submitted to the voters, and for other purposes expressly authorized by this chapter subject, however, to the provisions thereof."

Page 4
Ms. Harmon
May 19, 1983

Therefore, a political committee may make expenditures for the purpose of influencing the vote on a ballot question. It is not necessary that a question be legally certified as appearing on the ballot, but rather, a political committee may make expenditures in anticipation that a question will appear on a ballot. While the timing of the expenditure is not critical to a determination of its appropriateness under the campaign finance law, the purpose of the expenditure is critical to that determination. A political committee may organize and engage in campaign finance activity to influence the vote on a ballot question at any time, but such activity, be it receiving contributions or making expenditures, must be restricted to favoring or opposing a question submitted to the voters. Funds received for campaign finance purposes may not be used for any other purpose, including efforts to lobby the legislature on any matter relative to the ballot question.

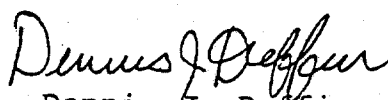
In accordance with this reasoning, the purpose of any expenditures by a committee organized in contemplation of a question appearing on the ballot is to influence the vote of the public on that question. At such time that it is apparent that the question is no longer at issue, due to a legal determination that the question will not appear on the ballot, or the question has appeared and been voted upon, or any other reason, the purpose of the political committee is concluded. The committee must then dissolve and dispose of any residual funds as provided by G.L. c. 55, Section 18 (h) which states, "Such residual funds shall not be converted to the personal use of the candidate or any other person except as provided in this paragraph. Such residual funds shall be donated to the Local Aid Fund established under the provisions of section two D of Chapter twenty nine."

7. May corporate funds be used to pay for such activities in contemplation of a question appearing on a ballot?

As stated above, a political committee may be organized and expend funds at anytime in order to influence the vote on a ballot question, or in contemplation of a question appearing on the ballot. The same conclusion must apply to the expenditure of corporate funds to influence the vote on a ballot question. Again, however, if such expenditures are to be for campaign finance purposes, they should be restricted to those activities relative to influencing the vote of the public question. As stated above, a corporation making such expenditures must file disclosure reports with this office.

I hope that the above has responded to the questions posed in your letter.

Very truly yours,


Dennis J. Duffin
Director